

Reserved Judgment

THE HIGH COURT OF UTTARANCHAL AT NAINITAL

First Appeal No. 163 of 2001
Old F.A. No. 626 of 2000

The Collector, Dehradun.

.... Appellant.

Versus

1. Smt. Veena Devi (Smt. Veena Verma,) Wife of Sri Chaman Lal, R/O 17/1 Curzan Road, Dehradun.
2. Union of India through General Manager, Telephone Exchange, Patel Nagar, Dehradun.

....Respondents.

With

First Appeal No. 167 of 2001
Old F.A. No. 626 of 2000

The Collector, Dehradun.

.... Appellant.

Versus

1. Smt. Urmila Verma, W/O Sri Mahendra Verma, R/O 17/1 Karjan Road, Dehradun.
2. Union of India through General Manager, Telephone, Patel Nagar, Dehradun.

.....Respondents.

Sri Syed Nadeem, Learned Standing Counsel for the petitioner-State.
Sri Narayan Dutt, learned counsel for the respondent no.1
Sri Ashok Agarwal, learned Standing Counsel for U.O.I.-Respondent no.2.

Date: October 28, 2006.

(Hon'ble B.S. Verma, J.)

Since both the first appeals arise out of the common judgment and award passed by the learned Reference Court and similar questions are involved of determination in these appeals, therefore, for the sake of convenience. They are being taken up together for decision by this common judgment.

Both these appeals are directed against the common judgment and award dated 30-11-1999 passed by the III Additional

District Judge, Dehradun, in Land Acquisition Reference No. 9 of 1985, Smt. Veena Devi Vs. Collector Dehradun and another and L.A.Case No. 10 of 1985, Smt. Urmila Verma Vs. Indian Post & Telegraph Department, Govt. of India, whereby the claimants Smt. Veena Devi Verma and Smt. Urmila Verma were held entitled to get compensation @ Rs. 70,000/- per Bigha in respect of 0.97 acre land under acquisition and damages of Rs. 1,48,000/- in respect of construction along with solatium, etc. as mentioned in the impugned order.

Relevant facts are that the land measuring 0.97 acres of Khasra Nos. 431 M, 432m. and 435 M was mutated in the names of the claimants and Sri Goverdhan Verma. The claimants after purchase of the land, established an industry named M/S Globe Industries and made constructions thereon along with boundary wall. The Government proposed to acquire the land for the purposes of Indian Posts and Telegraph Department. Notification under Section 4 of the Land Acquisition Act was published on 23-7-1982 followed by Notification under Section 6(1) of the said Act. The possession of land was taken on 11-3-1983 and the award was passed by the Special Land Acquisition Officer Dehradun (**for short SLAO**) on 26-11-1984 thereby the compensation of land was determined @ Rs. 45,000/- per Bigha and a sum of Rs. 75,000/- was awarded in lump sum towards constructions. The learned SLAO has in all awarded compensation towards market value of the land Rs. 2,35,720-43, Rs. 75,000/- costs/damages for construction, solatium @ 30%, Rs. 93,216-13 and interest @ 12% Rs. 12,942-02, total Rs. 4,16,878-58. Dis-satisfied with the award of the S.L.A.O., the claimant Veena Verma claimed market value of the land at the rate of Rs. 1,30,000/- per bigha as well as Rs. 1,48,168/- towards cost of construction already standing on the acquired land in addition to general and special damages of Rs. 5,00,000/- with a total of Rs. 15,66,568/- in addition to interest @ 18% from the date of possession till the date of payment. The claimant has stated in the objection under Section 18 of the Land

Acquisition Act that claimant Urmila Verma has 40% share, Smt. Veena Devi Verma has 35% and Sri Goverdhan Verma has 25% share in the property.

Another claimant Smt. Urmila Verma filed separate reference claiming 40% share in the disputed property. She claimed compensation of land @ Rs. 150/- per sq.yard i.e. Rs. 7,08,500/- and costs of construction worth Rs. 2,05,000/-, damages in business Rs. 1,00,000/- with a total of Rs. 10,24,500/- on various counts as mentioned in the reference under Section 18 of the Act.

The Collector resisted the reference by filing written statement on the ground that the award given by the Special Land Acquisition Officer is fair, just and adequate. Union of India also alleged in its written statement that the claim of compensation @ Rs. 1,30,000/- per Bigha is exorbitant and excessive.

Both the references were consolidated together by the learned Reference Court and the following issues were framed for determination:-

1. Whether the compensation awarded by the Land Acquisition Officer is inadequate?
2. To what amount of additional compensation, if any, the claimant is entitled?

Before the Reference Court, the claimants produced Chaman Lal P.W.1, Raj Kumar Gupta, Advocate, P.W.2, Om Praksh P.W. 3 and Hari Singh Bisht P.W.4, while the State of U.P. examined Sri Rajendra Kumar Sharma, D.W.1 in support of its case. The learned Reference Court heard the parties and after perusing the evidence on record, came to the following conclusion:-

“Looking to the circumstances narrated as above, compensation at the rate of Rs. 70,000/- per bigha shall be just

and proper to my mind. No contrary evidence has been produced for and on behalf of the State of U.P. D.W.1 Sri Raj Kumar Sharma also could not be of any use as he could not throw any light with regard to the market value of the property. Therefore, there is no alternative but to rely upon the exemplar filed by the claimant whereunder it becomes ample clear that the compensation at the rate of Rs. 70,000/- per bigha and damages regarding construction amounting to Rs. 1,48,000/- shall be adequate in the circumstances of the case.”

Ultimately, both the references were allowed and the learned Reference Court has passed the impugned award dated 30-11-1999. The learned Reference Court in addition to the aforesaid compensation awarded solatium at the rate of 30%, additional amount of compensation @ 12% per annum from the date of publication under Section 4 of the Act, i.e. 23.7.1982 till the date of possession or the date of award whichever is earlier, i.e. from 23-7-1982 to 11.3.1983. The claimants were awarded interest @ 9% per annum on the amount of compensation for one year from the date of possession, i.e. 11.3.1983 and interest @ 15% per annum after expiry of one year, i.e. 10-3-1984 onwards till the date of actual payment of the entire remaining amount of compensation after deducting the amount of compensation paid by SLAO, Dehradun. Aggrieved, the Collector has come up in appeal before this Court.

I have heard the submissions of the learned counsel for the parties and perused the entire evidence on record including the impugned award.

The judgment and award of the Reference Court has been assailed on the ground that the findings recorded by the learned Additional District Judge are not based on evidence on record and the compensation enhanced is excessive. On the other hand, the learned counsel for the claimants-respondents has submitted that the learned Reference Court has given concrete reasoning for award of compensation which is just and fair and there is no scope for interference in appeal.

Before the reference court, the claimants filed three sale instances, namely, 10-B is the sale deed executed on 6-8-1981 by which land measuring 209 sq. metre was sold for Rs. 20,000/-. By another sale instance 11-B, a plot measuring 376 sq.mt. was transferred for a consideration of Rs. 45,000/- on 2-3-1981 and by paper no. 13-B which is copy of Patta, it is evident that 6 Biswa land was leased out on 10-12-1982 for a consideration of Rs. 20,000/-. The learned Reference Court, while discarding the sale exemplar relied upon by the S.L.A.O. has observed as under:-

“Perusal of the report of Special Land Acquisition Officer reveals that a sum of Rs. 2,35,720/- was awarded as compensation on the basis of market value drawn in the light of sale deed. The record also reveals that Special Land Acquisition Officer has relied upon the sale deed collected by the Office of Special Land Acquisition Officer as Exemplar, executed during one year prior to the present notification. The said exemplar has not been proved in accordance with law. Therefore, the said exemplar was virtually a waste paper and could not have formed the basis of compensation to ascertain the market value of the land acquired.”

The learned Reference Court has elaborately discussed the sale exemplars filed from the side of the claimants and reference of the oral testimony of all the witnesses examined by both the parties has been made and after thrashing the evidence, the learned Reference Court came to the conclusion that that the “*sale deed 10B shall be the most suitable exemplar. Admittedly 209 Sq.meter land was transferred for a total sale consideration of Rs. 20,000/-. Therefore, on the basis of this document the market value of the land as on the date of acquisition comes out to be Rs. 72,000/- per bigha approximately.*”

Thus, I find that the findings arrived at by learned Reference Court are fully based on the evidence on record. The learned Reference Court has awarded compensation of land @ Rs. 70,000/- per bigha. It may be mentioned that the claimants had claimed market value of the land @ 1,30,000/- per bigha, which has

been rightly declined by the Reference Court. Regarding award of Rs. 1,48,000/- for the construction, the valuation report prepared by Sri O.P.Gupta, retired Chief Engineer (paper no. 112-V) was relied upon. I have perused the said document. P.W.1 Veena Verma has proved this report as Ext. 1. It is pertinent to note that the Collector has not filed any objection against the valuation report filed by Sri O.P.Gupta before the court below. The learned Reference Court has relied upon the valuation report only for the purposes of computing damages for the constructions.

Having considered the entire evidenced on record from all the four corners, in my opinion, the findings recorded by the Reference Court do not suffer from any illegality or infirmity. The conclusions arrived at by the reference court are fully supported by cogent and reliable evidence on record.

In view of the discussion above, I find no force in the appeals filed by the Collector, which are liable to be dismissed.

Both the appeals are hereby dismissed. The award dated 30-11-1999, under challenge, is upheld. No order as to costs.

(B.S. Verma, J.)

RCP